IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.: 1298 of 2005.

Decided on: 15.06.2007.

Sukh Dev Singh.

… … … Petitioner.

Versus

Hardev Singh and Others.

… … … Respondents.

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting?[1] *No.*

For the petitioner: **Mr. R.R. Rahi, Advocate.**

For Respondents No.1 to 10: Mr. Ajay Sharma, Advocate.

For Respondent No.11: **Mr. M.S. Chandel, Advocate General with Mr. M.A. Khan and Ms. Meenakshi, Deputy Advocate Generals.**

Rajiv Sharma, Judge:

The brief facts necessary for the adjudication of this petition are that the land comprised in Khasra No.2587 min in Mauza Marwari, Tehsil Amb, District Una was shamlat land and after coming into force of H.P. Tenancy and Land Reforms Act, 1974, the Government of Himachal Pradesh became owner of the land and mutation was entered vide Mutation No.2919 dated 20.1.1976

Whether reporters of local papers may be allowed to see the judgment? No.

in the name of the Government. It is further averred in the petition that the name of the petitioner was recorded in the column of cultivation showing him cultivating the land of this Khasra number from the crop of Rabi from 1975 by the Patwari of Mohal at the time of Girdawari and vide mutation No.3423, dated 23.9.1983 proprietary rights were conferred upon the petitioner by the Government comprising in Khasra No.2587/3 measuring 24 kanal 8 marlas. The respondents have filed an appeal against the mutation No.3423, dated 23.9.83 before the learned Collector, Una on 10.9.92. The learned Collector after hearing the parties had dismissed the appeal and held that mutation No. 3423, dated 29.9.1983 was rightly entered in the name of petitioner by the Assistant Collector Grade II. The respondents thereafter preferred a revision petition against the order of the Collector (Settlement) before the Divisional Commissioner, Kangra on 29.6.1993. The learned Divisional Commissioner, Kangra vide order 5.12.1994 had allowed the revision petition filed by the respondents. The petitioner preferred a revision petition before the learned Financial Commissioner (Appeals) on 4.7.1998. Both the cases, i.e. the Revenue Revision No.67/95 which was registered on the reference of the learned Divisional Commissioner in revision filed by the respondents and Revenue Revision No.298/95 filed by the present petitioner against the order of the learned Divisional Commissioner were clubbed and common order was passed by the learned Financial Commissioner (Appeals) in both the revision petitions on 27.10.2005. The learned Financial Commissioner (Appeals), H.P.

had accepted the recommendation made by the Divisional Commissioner, Kangra and revision petition No.67/95 was allowed, whereas revision petition No.298/95 field by the petitioner was dismissed.

Mr. R.R. Rahi, Advocate appearing on behalf of the petitioner submits that the order passed by the learned Financial Commissioner, dated 27.10.2005 is not sustainable in the eyes of law. The learned Advocate General and Mr. Ajay Sharma, Advocate appearing on behalf of the respondents have supported the orders passed by the learned Divisional Commissioner as well as by the Financial Commissioner (Appeals), dated 27.10.2005.

I have heard the parties and gone through the record.

The learned Divisional Commissioner has come to a definite conclusion in his order dated 5.12.1994 that the respondents were not issued any notice and the proceedings were conducted in their absence. The plea of limitation raised by the petitioner before the learned Divisional Commissioner was also found un-tenable by the learned Divisional Commissioner.

Mr. Rahi submits that the plea of limitation has not been considered by the Financial Commissioner (Appeals) in his order dated 27.10.2005. Mr. Rahi could not point out from the revision petition filed with this petition that this ground was taken before the Financial Commissioner (Appeals). In view of this, the plea of Mr. Rahi that the question of limitation has not been gone into by the Financial Commissioner cannot be accepted. The learned Financial Commissioner had given a definite finding that there was

basic infirmity in the order of Assistant Collector Grade-II while sanctioning mutation No.2423 since he did not afford any opportunity to the respondents prior to the petitioner being entered as non-occupancy tenant in the Khasra Girdawari. The learned Financial Commissioner had also affirmed the finding given by the learned Divisional Commissioner with regard to the violation of principles of natural justice while incorporating the petitioner as non-occupancy tenant as well as while conferring proprietary rights upon him. There is neither any jurisdictional error nor any procedural irregularity in the order of Financial Commissioner (Appeals), dated 27.10.2005 confirming the order of Divisional Commissioner, Kangra.

Accordingly, there is no force in the writ petition and the same is dismissed. The ad-interim order dated 23.12.2005, confirmed on 25.8.2006 is vacated. There shall be no order as to costs.

June 15, 2007 **(Rajiv Sharma)**
(sck). **Judge**